

G. MARIE PENNEY, et al.,	:	Order Dismissing Appeal As Moot
Appellants	:	
	:	
v.	:	
	:	Docket No. IBIA 90-103-A
ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 24, 1991

Appellants G. Marie Penney and 53 other enrolled, voting members of the Flandreau Santee Sioux Tribe (Tribe) sought review of an undated decision of the Aberdeen Area Director, Bureau of Indian Affairs (Area Director), declining to invalidate section 3 of the Tribe's Election Ordinance No. 86-2 (ordinance) on the grounds that it violated Article VI, section 2, of the Tribal Constitution. 1/ For the reasons discussed below, the Board of Indian Appeals (Boad) dismisses this appeal as moot.

1/ Article VI, sec. 2, of the Constitution provides:

"An elected official shall be removed from office by the Executive Committee upon investigation and receipt of substantive evidence of conviction of a felony, or of a crime involving moral turpitude. An elected official may also be removed from office for cause such as malfeasance in office at any regular or special meeting of the General Council provided that a petition for removal setting forth the charges against the official and signed by not less than thirty (30) percent of the qualified voters shall be presented to the Secretary-Treasurer or the President if the affected official is the Secretary-Treasurer. Upon receipt of such properly executed petition, the Secretary-Treasurer or President as appropriate shall call and give at least fifteen (15) days notice of a meeting of the General Council. The accused official shall be provided with a written specification of charges at least ten (10) days prior to the meeting. The charges and any written reply to the charges by the accused official shall be read at the meeting and a secret ballot vote taken on removal. If the vote is in favor of removal, the vacancy thereby created shall be filled by an election at such meeting by secret ballot to fill the unexpired term of office of the removed officer."

Section 3 of the ordinance provides:

"Upon receipt of the petition, the officer who receives the petition shall notify the Tribal Judge of its receipt and shall submit the petition to the Tribal Judge for his/her review. The Tribal Judge shall review the petition to determine that the required number of signatures are included on the petition. The Judge shall also review the charges against the named official to determine their validity and sufficiency of evidence to support such charges. Upon finding that the petition is valid, the Judge shall present the petition to the Executive Committee."

On August 10, 1989, members of the Tribe submitted to the Tribal Council a petition seeking the removal of the incumbent tribal President. The Secretary-Treasurer submitted the petition to the Tribal Judge, who, on August 29, 1989, held that there was not sufficient cause for the petition to be submitted to the voters. The Tribal Judge reaffirmed this decision in response to a request for reconsideration.

On March 28, 1990, appellants petitioned the Area Director to review and invalidate section 3 of the ordinance. Appellants stated that their petition was filed pursuant to 25 CFR Part 62. The Area Tribal Government Officer responded to the petition on March 30, 1990, stating:

A review of the Tribe's Constitution does not indicate that the Secretary of the Interior or his designee has any involvement in the removal of [the Tribe's] officers. Our only involvement is to recognize or not recognize those persons chosen by the eligible tribal members in an election for that purpose as being in accordance with the terms of the Tribe's Constitution." [Emphasis in original.]

Appellants sought reconsideration of the Area Tribal Government officer's decision, alleging that Article VIII, section I(f), of the Tribal Constitution authorized action by the Secretary under these circumstances. The cited section provides in pertinent part:

The Executive Committee of the Flandreau Santee Sioux Tribe shall exercise the following powers subject to any limitations imposed by the statutes or the Constitution of the United States.

* * * * *

(f) To promulgate and enforce ordinances which shall be subject to review by the Secretary of the Interior, governing and regulating the conduct of members of the Flandreau Santee Sioux Tribe on the reservation * * *.

The Area Director responded in an undated letter which was received by appellants' attorney on May 8, 1990. The Area Director stated: "A review of [the March 30, 1990,] letter has been done and there can be found no reason to rescind the decision." The letter informed appellants of their right to seek review of the decision.

The Board received appellants' notice of appeal on June 6, 1990. Appellants filed an opening brief. The Area Director filed a motion to dismiss, to which appellants did not respond.

The Area Director raises several grounds for dismissal: (1) the incumbent tribal president was defeated at a subsequent tribal election, thereby rendering this appeal moot; (2) appellants lack standing to bring this appeal; and (3) the Board lacks authority to invalidate a tribal ordinance that is not subject to Departmental review or approval. The Board addresses only the mootness issue.

It is apparent from the Area Director's filing that appellants have obtained the relief they sought; i.e., the removal of the incumbent tribal president. Accordingly, this appeal is moot.

The Board recognizes an exception to the mootness doctrine where there is a potentially recurring question raised by short-term orders, capable of repetition, yet evading review. Appellants have not argued for the application of this exception. Furthermore, the Board has specifically declined to invoke it where rendering a decision on the merits would require the Board to interpret tribal law when there is no clear necessity for it to do so. Sahmaunt v. Anadarko Area Director, 17 IBIA 60 (1989); Fort McDermitt Paiute Shoshone Tribe v. Acting Phoenix Area Director, 16 IBIA 221 (1988). There is no clear necessity for the Board to interpret tribal law in this case.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Aberdeen Area Director's May 8, 1990, decision is dismissed as moot.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge